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ABSTRACT

In December 1990, the United Nations General Assembly approved the new International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This international agreement broadly defines the rights of migrant workers and their families and offers some means to review the compliance of nations in upholding these rights. This illustrated booklet contains three articles about the agreement and is intended to stimulate the campaign for adoption by 20 member nations necessary for ratification. "The Origins and Importance of the Convention," by Shirley Hune, describes migrants as an unprotected, frequently exploited population; reviews the compromises and dilemmas of the drafting process; and outlines highlights of the agreement. In "A Brief Guide to the Text," Patrick Taran presents an abstract of the agreement's preamble and each of its 93 articles. These include scope and definitions of the convention; the extension of fundamental human rights as elaborated in other U.N. instruments to all migrant workers; establishment of the principle of equality of treatment (as compared to the treatment of nationals) for all migrant workers and their families with regard to court litigation, employment, and access to education for their children; and placement of the responsibilities for protection of human rights on sending, receiving, and transit states. "Church Action for Migrant Rights," by Jan Niessen, describes advocacy efforts by church groups on behalf of the agreement, discusses ways in which international conventions can be used to defend migrant rights on a national level, and outlines other existing international agreements on migration. (SV)

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PROCLAIMING MIGRANTS RIGHTS

The New International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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INTRODUCTION

On December 18, 1990 the United Nations General Assembly approved the new International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This international agreement is a major accomplishment. Ten years of arduous drafting work and negotiations were required to bring it into being.

The document provides a broad definition of the rights of migrant workers and their families and offers some means to review the compliance of nations in upholding these rights.

In a world that becomes increasingly smaller and where people are very mobile, it becomes more than ever necessary to develop international law aimed at the protection of those who are compelled to build up a life elsewhere or migrate voluntarily. The new Convention is a necessary extension of global efforts to expand human rights, including those of migrant workers and their family members.

The significance of this new international convention has yet to be addressed by migrant's associations or by churches. However, as the experience with existing international conventions on human rights, on refugees as well as other issues shows, such conventions can be extremely valuable mechanisms both to bring about recognition of rights and to uphold or defend such rights in practice.

Clearly, implementation of this Convention will go a long way towards upholding basic humanitarian treatment of migrant workers wherever they may be. Indeed, campaigning to promote ratification of this Convention can itself serve to highlight the role and contributions of migrant workers in many countries and to gain recognition for their rights.

Twenty nations (states) must ratify this new international human rights accord in order for it to "enter in force". Even then, it will only be binding on those states which do ratify it. Ratification involves formally agreeing to be bound by the Conventions's provisions and incorporating these provisions into national law.

Obtaining approval of this Convention will be no easier than is the gaining of acceptance for the presence of migrants in many countries. Already officials of three major "Western" countries have indicated that their governments do not intend to pursue ratification.

"When a stranger sojourns with you in your land, you shall not do him wrong. The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself..."
(Leviticus 19:33-34)

We believe that the necessary prerequisite to addressing questions and resolving tensions in any community is acknowledging the basic rights and dignity of all persons involved. As the presence of migrants becomes a major social and political issue in so many communities worldwide, this Convention can be a cornerstone in responding.

We and our organizations believe that work towards ratification and implementation of this new Convention must be a high priority for us nd for the churches. As migration involves so many communities, we invite migrant groups, human rights organizations, labor and business groups, and others concerned to join with us in campaigning for universal adoption of this convention.

We hope this handbook will stimulate the campaign, by offering views on the origins, importance and content of the Convention along with suggested actions to put it into practice.

Shirley Hune
Jan Niessen
Patrick Taran

"Open your mouth for the dumb, for the rights of all who are left desolate. Open your mouth, judge righteously, maintain the rights of the poor and needy."
(Proverbs 31:8-9)

Campaigning to promote ratification of this Convention can itself serve to highlight the role and contributions of migrant workers. Here, migrant workers at a cultural festival in France. *Photo : Sebastiao Salgado*

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THE ORIGINS AND IMPORTANCE OF THE CONVENTION

It seeks to establish* minimum *standards of protection for migrant workers and members of their families that are universally acknowledged.

By Shirley Hune*

The new international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families just approved by the United Nations General Assembly is a major advance for migrants worldwide. The result of a ten year drafting process, it is a comprehensive text of 93 articles.

It extends the protection of fundamental human rights to all migrant workers and their families, including both documented and undocumented in status.

The significance of this Convention can be highlighted by these six points :

(1) It recognizes that migrant workers and members of their families being non-nationals residing in states of employment or in transit are an unprotected population whose rights are often not addressed by the national legislation of receiving states and by their own states of origin. Therefore, it becomes the responsibility of the international community through the United Nations to provide measures of protection.

(2) It provides for the first time an international definition of a migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the extension of human rights to migrant workers and members of their families.

(3) Migrant workers are viewed as more than laborers or economic entities. They are social entities with families and have rights accordingly including that of family reunification.

(4) Fundamental human rights are extended to ALL migrant workers both documented and undocumented, with additional rights being provided to documented migrant workers and members of their families notably equality of treatment with nationals of states of employment in a number of legal, political, economic, social, and cultural areas.

(5) Overall, the International Convention seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families including an end to their illegal or clandestine movements and to irregular or undocumented situations.

(6) Finally, it seeks to establish *minimum* standards of protection for migrant workers and members of their families that are universally acknowledged. Hence those states lacking national standards under international pressure will come to bring their legislation in closer harmony with recognized universal standards of the International Convention.

Why is it needed ?

Migrant workers are a dynamic, permanent and global phenomenon in the contemporary world whose numbers and scope have expanded in the post World War II era. More and more persons of diverse backgrounds and training travel across many more borders and seas than in previous eras for employment in a variety of forms and occupations. Women are recruited as likely as men. Workers are being recruited in groups as well as individually. Family members often follow. Many more nation-states are involved either as sending countries or receiving countries, and in some cases both. Countries which are not experiencing this phenomenon today, have in the past, and may in the future. Transnational labor migration is both intercontinental and regional. The inter-regional migration is primarily from developing countries in the "third world" to developed countries in the West. There is also today significant movement of workers within regions from less developed states to newly developed sectors, such as in southern Africa, Asia and Europe.

The migrant worker phenomenon has international political, economic, and social effects as well as humanitarian considerations. The recruitment of migrant workers and their remittances to their homelands comprise a type of global interdependency for the receiving and sending countries that many states have yet to fully acknowledge. Many states of employment now recognize that migrant workers and their families are a

Migrant workers are a dynamic, permanent and global phenomenon in the contemporary world : Asian construction workers in Saudi Arabia. *Photo : John Clark, Camera Press London*

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There is significant movement of workers within regions from less developed states to developed sectors in southern Africa, Asia and Europe : Mine workers from Lesotho in South Africa. *WCC Photo*

The recruitment of migrant workers and their remittances to their homelands comprise a type of global interdependency not yet fully acknowledged.

permanent rather than a temporary part of their society (i.e. the ongoing "guest worker" systems in many countries) requiring new strategies and policies for peaceful national integration. States have viewed themselves as relatively homogeneous historically often find their own citizens opposing the permanent presence of migrant workers whose race and culture is considered distinctly different and are therefore seen as a threat to the national character. Tensions between nationals and migrant worker communities are further exacerbated when the economy stagnates.

As non-nationals in states of transit and employment, migrant workers and members of their families remain relatively defenseless, open to exploitation and often legally unprotected by national laws or civil rights codes. Hence the need for international protection and universal standards.

Origins of the International Convention

The International Convention is a logical extension of global efforts to expand human rights. It had its primary impetus in a 1975 Economic and Social Council (ECOSOC) Report on the "Exploitation of Labour Through Illicit and Clandestine Trafficking". That report drew attention to the precarious position of migrant workers around the world and out of it came the search for ways to protect such workers in their recruitment and other areas. There was also the recognition that the International Labour Organization (ILO) was by its mandate confined to consider the economic rights of workers. Furthermore, its Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) along with its Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151) had yet to gain wide international support. Those who sought a broader definition of protection for migrant workers and those who concluded that a UN General Assembly Convention would have wider acceptability than ILO Conventions pursued a human rights document within the context of a UN framework. The result was UNGA resolution 34/172 of December 1979 establishing an open-ended Working Group to consider the desirability of a new instrument on human rights to be applied to migrant workers.

THE DRAFTING PROCESS

Usually, the drafting of a Convention takes a long time. Firstly, States have to be convinced that protection is needed and that an international Convention could offer such protection.

Secondly, as was the case with the new UN Convention, the drafting itself takes many years. The reasons for this are easy to understand. Agreement must be reached on who will be offered what kind of protection. Should seasonal workers or the so-called undocumented migrant workers be included and what about family reunification ? Moreover, it is necessary to define which rights are going to be included in the Convention whether social, cultural, economic and/or political rights. Normally, States are very keen to safeguard their own national competence in these matters. They do not like to be forced into the position of adapting their national legislation too much to the often more liberal international standards.

In fact, the drafting process is one of negotiations and the result will be some sort of compromise in order to have, at a later stage, the Convention signed by as many States as possible.

Thirdly, a draft Convention will finally be brought before an intergovernmental organization (for example, the UN or the ILO) for adoption. This offers the last opportunity to States to make amendments to the text. Once the draft has been adopted a Convention is open to all States for ratification. As soon as a certain number of States — the number set by the Convention — has done so, the Convention will enter into force.

J.N.

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The Convention recognizes that migrant workers and their families are an unprotected population.

The Drafting Process : Some Compromises and Dilemmas

The open-ended Working Group developed and adopted each article of the draft Convention by consensus. There were numerous compromises. Sending states tended to seek the widest protection possible. Receiving states with restrictive national legislation were concerned with the cost and feasibility of compliance with a number of the proposed articles, such as those related to political and educational access. An underlying concern was how to draft an international convention that would provide minimum standards and yet be acceptable to as many states as possible to ensure ratification. Consequently, there were great efforts to harmonize the draft convention with existing national legislations. To accommodate the many sides, a number of articles outlined rights that were optional rather than mandatory, but provided for states to be able to maintain or adopt standards above the minimum standards set by the Convention.

Throughout the drafting process, the ILO served as an observer and was occasionally consulted. The underlying issue was whether or not this Convention would detract from the work of the ILO and to what extent the final articles would be stronger or weaker than existing ILO standards. The results are mixed. Some articles go beyond ILO instruments and some fall short. Many state representatives who participated in the drafting process pointed out that since so few states had ratified the ILO instruments, the UN instrument provided a major opportunity to extend protection to large numbers of vulnerable workers.

Like other international instruments, the application of the International Convention will be supervised by a Committee of experts elected from a list of nominees of the States Parties. There is to be representation of geographical regions, including States of origins and States of employment, and of the principal legal systems. The Committee is to be funded as a component of the General Secretariat of the United Nations, giving it greater flexibility and independence than if it were funded only by the States Parties to the Convention.

Highlights of the International Convention

- Provides a universal definition of a migrant worker (Art. 2 "a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national").
- Establishes particular categories of migrant workers ("frontier worker", "seasonal worker", "seafarer", "worker on an offshore installation", "itinerant worker", "project-tied worker", "specified-employment worker", and "self-employed worker") with provisions applicable to each and members of their families.
- Recognizes without distinction both men and women as migrant workers.
- Extends fundamental human rights as elaborated in the principles embodied in existing basic human rights instruments of the United Nations without distinction to all migrant workers and members of their families, both documented and undocumented. Hence the Convention broadens the application of human rights. In drafting minimum standards to protect migrant workers and members of their families, efforts were made not to erode existing universal instruments.
- Views migrant workers as more than economic beings, but as social beings. Hence migrant workers and members of their families are treated as a unit with rights beyond that of laborers. The draft International Convention seeks to support family reunification and assist in their adjustment to the host society and in their return home.
- Includes self-employed amongst the categories of migrant workers with the understanding that it relates to a small scale activity involving oneself and possibly members of one's family.
- Establishes the principle of "equality of treatment" with nationals for all migrant workers and members of their families in a number of areas such as before courts and tribunals (Art. 18), in terms of employment (Art. 25), and access to education for their children (Art. 29).
- Provides additional rights to migrant workers and members of their families in a documented or legal situation.

It seeks to discourage clandestine migration by binding states to promote sound, equitable, humane and lawful conditions. Mexicans and Central Americans awaiting a chance to enter the USA "without inspection" near El Paso, Texas.

- Seeks to protect migrant workers and members of their families from collective expulsion (Art. 22).
- Opposes penalizing individuals because of their status or change in status. For example, migrant workers and/or members of their families are to be protected from double taxation (Art. 48) and are entitled to return home with their earnings and savings (Art. 47). Members of the family are also provided with certain protections due to a migrant worker's death or dissolution of marriage (Art. 50).

The Convention seeks to protect migrant workers and members of their families from collective expulsion.

- Seeks to discourage clandestine and illegal migration through binding states parties involved to promote sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families.
- Places responsibilities for protection of human rights on both sending and receiving states as well as states of transit.

Certain states rights and rights of nationals remain protected, notably :

- States retain the right to determine who is admitted to their territories and under which conditions residency and work permits are given.
- States have the option in their national legislation of providing for more rights for migrant workers and members of their families than the international minimum standard established in the International Convention.
- Non-nationals are not granted more rights than those extended to nationals.

IUCC Photo : Michael Ann Mullen

An underlying concern was how to draft an international convention that would provide minimum standards and yet be acceptable to as many states as possible to ensure ratification. Women from India in a London "sweat shop".

Conclusion

This International Convention makes major strides towards providing *minimal* universal standards for the protection of migrant workers and their family members in the areas of civil, political, legal, economic, social and cultural rights. It is a significant effort on the part of the global community to internationalize human rights by extending such fundamental rights to a highly vulnerable population in the world today.

The newly approved International Convention now must be ratified by the UN member governments in order to "enter into force" and become an effective international standard. Equally importantly, its measures must be incorporated into national laws and practices.

Non-governmental groups and other organizations interested in the situation of migrant workers and members of their families are encouraged to review the International Convention for its impact and to consider ways to promote its ratification.

1) For a detailed discussion comparing the new Convention with ILO instruments, see M. Hasenau, "Setting Norms in the United Nations System : The Draft Convention on the Protection of the Rights of All Migrant Workers and their Families in Relation to ILO in Standards on Migrant Workers", *International Migration*, 28:2 (June 1990): 133-157. He concludes that the addition of the New Convention encumbers the international system by creating two distinct sets of standards on the rights of migrant workers and members of their families each with its own supervisory and compliance mechanisms.

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A BRIEF GUIDE TO THE TEXT

Turkish garment workers in Germany *Photo : epd-bild/ Wirtz*

Prepared by Patrick Taran*

The full text of the New Convention provides an extensive and comprehensive definition of the rights — and some qualifications of rights — for migrant workers and their families. Its preamble and 93 articles fill 37 pages of the report to the General Assembly session at which the Convention was adopted.

The text of this Convention can be obtained in any of the six working languages of the U.N. by written request to "Migrants' Rights Convention", United Nations Centre for Human Rights, 1211 Geneva 10, Switzerland.

The Convention is a global effort to uphold fundamental human rights for a highly vulnerable population.

Some of the most noteworthy provisions were highlighted in the previous article. This summary attempts to introduce, article by article, the concepts and content of the full text. However, this abstract can only offer a general guide to the very detailed content of the Convention. The official text must be consulted for a full understanding of its provisions and for matters of potential application and legal interpretation.

Preamble

The Preamble declares among 16 points that the States Parties — the nations signing and ratifying the Convention :

- Take into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights;
- Take into account also the principles and standards of the International Labour Organization;
- Realize the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community;
- Consider the situation of vulnerability of migrant workers and their families, and that their rights have not been sufficiently recognized everywhere;
- Consider that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if the fundamental human rights of all migrant workers are more widely recognized;
- and are convinced therefore of the need to bring about the international protection of the rights of all migrant workers and their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally.

PART I : Scope and Definitions

Article 1 states that the present Convention is applicable, except as otherwise provided, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or convictions, political opinion.

Article 2 defines the term "migrant worker" as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Other terms are also identified such as "frontier worker", "seasonal worker", and "specified-employment worker" for persons required to depart from the State of employment at the expiration of their authorized period of stay.

Article 3 excludes applicability to employees of international organizations and agencies or employees of a State participating in development programmes; investors; refugees and stateless persons; students and trainees; seafarers and off-shore installation workers.

Articles 4 and 5 differentiate migrant workers and "members of the family" as documented, in a regular situation, or as non-documented, in an irregular situation.

* Patrick Taran is the Secretary for Migration at the World Council of Churches. Prior to joining the WCC staff in 1990, he worked with Church World Service and other ecumenical immigration and refugee programs in North America since 1976.

Article 6 defines the terms "State of origin", "State of employment" and "State of transit" relative to the migrant worker.

PART II : Non-discrimination

Article 7 provides that non-discrimination with respect to rights shall exist without distinction of any kind on the basis of sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III : Human Rights of All Migrant Workers and Members of Their Families

This section defines rights of migrant workers and members of their families as follows :

Article 8 — freedom to leave any State, including their State of origin and the right at any time to re-enter their State of origin.

Article 9 — the right to life.

Article 10 — no subjugation to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11 — prohibition against being held in slavery or servitude, or being required to perform forced or compulsory labour (excepting what is normally required of a person who is under detention in consequence of a lawful order, or in cases of emergency or calamity, or normal civil obligations).

Article 12 — the right to freedom of thought, conscience and religion.

Article 13 — the right to hold opinions without interference and the right to freedom of expression.

Article 14 — no subjugation to arbitrary or unlawful interference with their privacy.

Article 15 — no arbitrary confiscation of property.

Article 16 — the rights to liberty and security of person and effective protection by the State against violence. Verification of identity must be carried out in accordance with procedures established by law. No individual or collective arbitrary arrest or detention. Those arrested shall be informed at the time of arrest, as far as possible in a language they understand, of the reasons for their arrest. The consular or diplomatic authorities of the State of origin shall be informed without delay of arrest, if so requested.

Article 17 — if deprived of liberty, treatment with humanity and with respect for the inherent dignity of the human person and cultural identity. Accused migrants shall be held separately from convicted persons and juveniles are to be separated from adults and speedily adjudicated. Detained migrants are entitled to the same rights as nationals in the same situation.

Article 18 — the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them, entitlement to minimum guarantees prescribed in the Convention. Specific parameters of legal treatment are enumerated.

Article 19 — no conviction for any criminal offence that did not constitute a criminal offence under national or international law at the time when the offence was committed.

Article 20 — no imprisonment merely on the ground of failure to fulfil a contractual obligation.

Article 21 renders unlawful, other than by a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents. No authorized confiscation of such documents shall take place without delivery of a detailed receipt.

Article 22 prohibits measures of collective expulsion. Expulsion may only be in pursuance of a decision taken by the competent authority in accordance with law and the decision shall be communicated to migrant workers in a language they understand. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages.

Article 12 *upholds the right to freedom of thought, conscience and religion.*

Article 31 *requires States Parties to ensure respect for cultural identity.*

Article 47 *upholds the right to transfer earnings and savings.*

Photo: Patrick Zachmann

Article 16 *provides the right to effective protection by the State against violence. Today in many countries, migrants are subjected to violence and to frequent identity checks by police, especially if their skin colour or appearances differ from those typical of the host country.*

Article 23 — the right to have recourse to the protection and assistance of their State of origin.

Article 24 — the right to recognition everywhere as a person before the law.

Article 25 requires treatment no less favourable than that which applies to nationals of the receiving State regarding remuneration. It shall not be lawful to derogate from the principle of equality of treatment.

Article 26 — the right to take part in meetings and activities of trade unions, to join freely any trade union, to seek the aid and assistance of any trade union, no restrictions may be placed other than those that are prescribed by law and which are necessary in a democratic society.

Article 27 stipulates the same treatment for social security granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation.

Article 28 — the right to receive any medical care that is urgently required for the preservation of their life and such emergency medical care shall not be refused by reason of any irregularity in their situation or that of their parents.

Article 29 provides children the right of access to education on the basis of equivalence with nationals.

Article 30 provides children the right to a name, to registration of birth and to a nationality.

Article 31 requires States Parties to ensure respect for cultural identity.

Article 32 — the right to transfer earnings and savings and personal effects and belongings upon the termination of their stay.

Article 33 — the right to be informed by the State of origin, the State of employment or the State of transit concerning rights arising out of the present Convention and the conditions of admission.

Article 34 stipulates that migrants have the obligation to comply with the laws and regulations and to respect the cultural identity of any State of transit or State of employment.

Article 35 precludes any interpretation of this part as implying the regularization of a migrant worker or family member who is non-documented or in an irregular situation.

PART IV : Other Rights of Migrant Workers and Members of their Families in a Regular Situation

Article 36 — Migrant workers and their families enjoy the rights set forth in this part of the Convention in addition to those set forth in part III.

Article 38 — States of employment shall make every effort to authorize migrant workers and family members to be temporarily absent without effect upon their authorization to stay or to work.

Article 39 provides for the right to liberty of movement in the territory of the State of employment and shall not be subject to any restrictions except those provided by law and are necessary to protect national security and public order.

Article 40 upholds the right to form associations and trade unions with no restrictions to be placed on the exercise of this right.

Article 41 provides for the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

Article 42 provides States requests to consider the establishment of procedures or institutions through which to take account of special needs, aspirations and obligations of migrant workers and family members, including consulting them in decisions concerning the life and administration of local communities.

Article 43 stipulates equality of treatment with nationals such as access to educational institutions, vocational guidance and training, housing, social and health services, cooperatives and self-managed enterprises, and participation in cultural life.

Article 44 recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society, and requires appropriate measures to ensure the protection of the unity of the family of the migrant worker.

Article 45 mandates that members of the family of migrant workers shall enjoy equality of treatment with nationals in the State of

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Article 40 upholds the right to form associations and trade unions. Here, farmworkers celebrate the 10th anniversary of union organizing among undocumented migrants in Arizona, U.S.A. *WCC Photo : Andre Jacques*

employment, in relation to access to educational institutions, vocational guidance, social and health services, and participation in cultural life. States of employment are to facilitate the integration of children of migrant workers in the local school system and to facilitate for the children of migrant workers the teaching of their mother tongue and culture.

Article 46 provides for exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment upon departure from the State of origin, initial admission to the State of employment, final departure from this State, and final return to the State of origin.

Article 47 upholds the right to transfer their earnings and savings.

Article 48 restricts liability to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances.

Article 49 provides for authorization of residence for at least the same period of time as authorization to engage in remunerated activity.

Article 52 upholds the right to freely choose remunerated activity.

Article 53 provides that family members who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity.

Article 54 provides that without prejudice to the terms of their authorization, migrant workers shall enjoy equality of treatment with nationals in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment.

Article 56 limits expulsion from a State of employment, to reasons defined in the national legislation of that State and subject to the safeguards established in part III.

PART V : Provisions Applicable to Particular Categories

Articles 58 to 63 define particular categories of frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers and self-employed workers, and allow for certain limited exceptions to the rights set forth in part IV.

PART VI : Promotion of Sound, Equitable, Humane and Lawful Conditions

Article 64 mandates States Parties concerned to cooperate with a view to promoting sound, equitable and humane conditions.

Article 65 stipulates that States Parties shall maintain appropriate services to deal with international migration of workers, such as the formulation and implementation of policies, an exchange of information, con-

Article 44 requires measures to ensure family unity for migrants. *Photo : Salgado Jr.*

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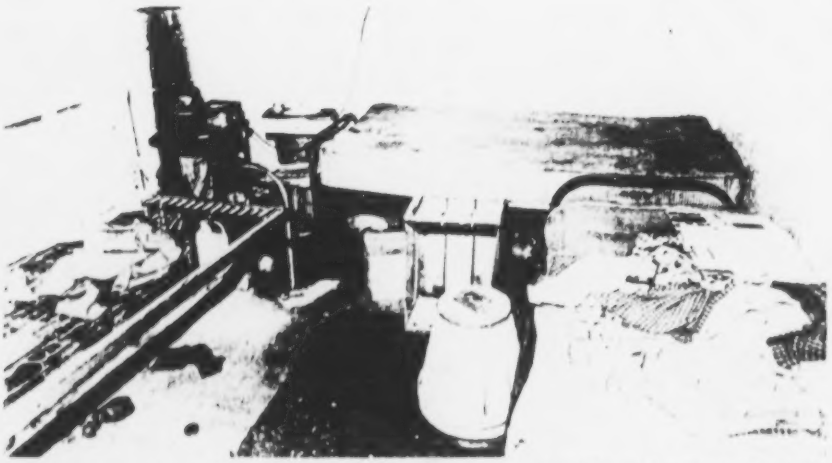

Article 70 requires working and living conditions of migrant workers equal to those of nationals in fitness, safety, health and principles of human dignity. *Religious News Service Photo*

sultation and cooperation with the other States Parties, provision of appropriate information particularly to employers, and provision of information and appropriate assistance to migrant workers.

Article 67 obligates States Parties concerned to cooperate in the adoption of measures for the orderly return of migrant workers when they are in the State of employment in an irregular situation.

Article 68 requires States Parties to collaborate to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation. Included are appropriate measures against the dissemination of misleading information; measures to detect and eradicate illegal or clandestine movements of migrant workers and to impose effective sanctions on persons or entities who organize such movements; and measures to impose effective sanctions on persons in an irregular situation.

Article 69 requests States Parties to take appropriate measures to end situations of irregular migration. Whenever States Parties consider regularizing the situation of such persons, account is to be taken of the circumstances of entry, the duration of stay and other relevant considerations.

Article 70 obligates the States Parties to take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers are in keeping with the standards of fitness, safety, health and principles of human dignity.

PART VII : Application of the Convention

Article 72 establishes a Committee on the Protection of the Rights of All Migrant Workers and Their Families. Initially, it is to consist of ten and, after the entry of the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties. They shall be elected and serve in their personal capacity.

Article 73 requires States Parties to report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention as follows : within one year after the entry into force of the Convention; and thereafter every five years.

Article 74 mandates the Committee to examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned.

Article 75 mandates the Committee to adopt its own procedures, elect officers, and meet annually at UN Headquarters.

Article 76 allows a State Party to declare to the Committee that another State Party is not fulfilling its obligations and sets conditions and procedures for the Committee to review claims and communicate with the governments concerned.

Article 77 provides for States Parties to permit the Committee to receive and consider claims by individuals regarding violations of any provisions. Parameters for submission and considerations are described.

Article 78 conditions provisions of Article 76 to other UN instruments and to agreements between States Parties.

PART VIII : General Provisions

Article 79 reserves to States the right to establish criteria for admission of migrant workers and their families but stipulates legal and other treatment in accord with the Convention.

Article 80 precludes interpretations impairing provisions of the UN Charter or the constitutions of specialized UN agencies.

Article 81 provides that the Convention does not limit more favourable rights and freedoms in any national law or other international treaty.

Article 82 prohibits renunciation of any rights and any pressure on individuals to relinquish any rights.

Article 83 requires States to ensure effective remedies to any violation, including review of claims by competent authorities, and enforcement of remedies when granted.

Article 84 requires adoption of legislative and other measures to implement the provisions of the Convention.

PART IX : Final Provisions

Articles 85 through 87 provide for depositing at the UN, signing, ratification and entry into force of the Convention.

Article 88 disallows exclusion of application of any part of the Convention by States Parties.

Article 89 provides conditions for denunciation (withdrawal) of any State Party after five years of entry into force.

Article 90 allows for requests for revision.

Article 91 conditions submission of reservations.

Article 92 provides for arbitration in the case of disputes between States arising from the Convention not settled by negotiation.

Article 93 describes official languages and transmittal of the text to all States.

CHURCH ACTION FOR MIGRANT RIGHTS

Campaigning for ratification could change the debates on migration issues in various countries.

Prepared by Jan Niessen*

Experience shows that developing and implementing international conventions require much advocacy and public pressure internationally and in individual countries — including by the churches. Already church action has contributed to the development of international recognition of the rights of migrants. Today, given the ambivalance in many societies towards immigrants and migrant workers, the voice of the churches is especially critical to ensure the acceptance and implementation of this new Convention.

Church action can be critical in initiating and promoting the process of achieving international conventions. A good example is the experience of the Churches' Committee for Migrants in Europe (CCME) in promoting a regional convention. CCME started a campaign in 1984 for a European Convention on Permanent Residence Right. Migrants in the various European countries had made clear that their legal situation was still not secure. This was basically due to the fact that they were still considered to be temporary migrants (with temporary residence and work permits) whereas over the years it became clear that they have settled down permanently in the receiving countries. The CCME created a working group which during many years informed the bodies of the Council of Europe (an international platform consisting of 24 Member States) on the precarious legal situation of migrants. Furthermore, a proposal for a text of a Convention on Permanent Residence Right was drafted and distributed. In 1989 this lobby work resulted in a recommendation to the Committee of Ministers of the Council of Europe to start the drafting of a European convention securing a permanent residence right for migrants.

Making Use of a Convention

The significance of Conventions is often underestimated by migrants' associations, organizations in support of migrants and local churches. Compared with the demands such groups put forward, conventions are sometimes too much of a compromise and offer too little. However, international conventions are valuable instruments to defend the rights of migrants on a national level. For that a proper knowledge of the contents of conventions and their supervising instruments is necessary. A good example of the use being made by a non-governmental organization of an international convention is the following case.

Under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention has been violated by a State may submit written communications to a special created Committee that supervises the application of the Convention. This is only possible when a country has ratified the Convention and explicitly accepted the individual right to complain. Unfortunately of the 128 States that ratified the Convention only 14 countries did so.

The first communication dealt with by the supervising Committee concerned a Turkish citizen residing in the Netherlands who claimed to be the victim of violation of certain articles in the Convention by the State. She had complained about discriminatory statements made by her employer in his application to a Dutch court to terminate her employment contract. The court's decision granted the employer's request. All available national juridical remedies were then tried and exhausted. Afterwards a written communication describing the statements and unresolved situation of discrimination was submitted to the Committee on the application of the Convention. The Committee considered the case and issued an opinion that the dismissal had been the result of a failure to take into account all the circumstances of the case and that the Turkish citizen had not been given protection in respect of her right to work. It therefore recommended to the State that it ascertain whether she was currently gainfully employed and, if not, that the State use its good offices to secure alternative employ-

Photo : Marc Vanappelghem

International conventions are valuable instruments to defend the rights of migrants on a national level.

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The potential for negative publicity and airing of denunciations can make governments more diligent as to the application of the Convention.

ment for her and/or to provide her with appropriate relief*.

Subsequently the Dutch government paid an indemnity to the Turkish woman and is, partly as result of the outcome of this case, also reconsidering its legislation related to the termination of work contracts. Normally, such a procedure takes a long time. In this case it took extra long (4 years in total). This was due to the fact that the Committee was not provided with enough financial means to meet regularly.

New Provision for Individual Complaints

According to Part VII of the new Convention, a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families will be founded that will see to it that ratifying States apply the Convention properly. The UN Secretary General shall provide this Committee with the necessary means so that the Committee can operate effectively.

Signatory States are obliged to submit to this Committee a report on the legislative, juridical, administrative and other measures they have taken to give effect to the Convention. They should do so within one year after the entry into force of the Convention and thereafter every five years and whenever the Committee so requests. The Committee may comment on these reports and may take into consideration the opinions of other intergovernmental or UN-bodies and of other interested non-governmental bodies.

Here migrant associations and churches could play an important role. For example, they may use their contacts with members of national parliaments to question the report prepared by their governments. They can also write their own reports and send these to the Committee.

Moreover, the Committee may receive communications submitted by individuals claiming that their rights enumerated in the Conventions have been violated. The State accused of the violation will be asked to clarify its position and indicate what it intends to do to change the situation. States must, however, have declared explicitly that they recognize the Committee's competence to receive these communications. The Committee's views on the matter are not legally binding for the States.

* The case has been described in the Report of the Committee on the Elimination of Racial Discrimination. United Nations General Assembly (Official Records : forty-third session-Supplement No. 18).

EXISTING CONVENTIONS ON MIGRATION

Until the adoption of the new Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, no UN Convention existed which dealt exclusively with migration for employment and migrant workers. Conventions of the International Labour Organization on migration for employment have long been the only world-wide instruments designed to protect migrant workers. World-wide means that these Conventions are open to all States in every continent.

Of particular importance are the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migration for Employment (Supplementary Provisions) Convention, 1975 (No. 143). The first Convention is mainly aimed at the recruitment, placement and working conditions of individually or collectively engaged migrant workers. It introduces also the equality of treatment principle. The second Convention aims to contribute to the elimination of illegal migration or employment and aims to promote a real policy of equality of opportunity and treatment.

These Conventions do not have a reciprocity clause so that ratifying States must apply them to all migrants even if they are nationals of States that have not ratified these Conventions. Unfortunately, not many States have ratified them (38 and 15 respectively, among them many countries of origin of migrants).

There are also the United Nations human rights instruments which apply to every human being. While they do not address the specific rights of migrant workers, they uphold basic rights to which migrants are entitled. The principal agreements are together called the International Bill of Human Rights. It consists of the Universal Declaration of Human Rights (1948) and two Covenants, the Covenant on Economic, Social and Cultural Rights (1966) and the Covenant on Civil and Political Rights (1966). Both Covenants have anti-discrimination clauses.

In 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention establishes a principle of non-discrimination in terms of any distinction, exclusion, restriction or preference based on the grounds of race. As shown in the accompanying article, this Convention is also a valuable instrument for migrants to defend their rights.

There is also a very important tandem international accord on refugees, people compelled to abandon their homelands and unable to return for political reasons. The two components are the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Over 100 nations have signed one or both of these; they serve as the minimum international standards for defining and insuring protection for refugees.

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Churches can use their authority to convince governments and parliaments that this Convention must be signed, ratified and faithfully applied.

While this may seem weak, it does constitute a forum for international public review. The potential for negative publicity and airing of denunciations can make governments more diligent as to the application of the Convention, and thus protection of migrants rights.

Church Action

Churches and church agencies can play a vital role in pressing for the ratification and proper application of the new Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Examples have already been given related to assisting migrants to use this Convention once it has been adopted. In some countries, churches hold politically influential positions. In others, they are highly respected because of the values they stand for. They can use their authority to convince governments and parliaments that this Convention must be signed, ratified and faithfully applied, including the recognition of the right of individuals to complain.

Local churches, action groups and migrants' associations can take a number of steps to publicize and promote this new Convention. Among them are :

- Distribute in the local community copies of this pamphlet containing information on the Convention.
- Prepare a press packet with this pamphlet (or summaries or translations of it) and material related to the presence, situations and treatment of migrants in the local community.
- Organize a public community forum to discuss the Convention, its importance and community advocacy for its ratification.
- Contact friends or sympathetic reporters and editors in the local news media and encourage them to write articles on the Convention.
- Write letters to local governing bodies and local news media informing them of the new Convention and highlighting its importance.

Migrant workers contribute to society : a Polish worker in France. *Photo : Salgado Jr.*

- Organize a letter writing campaign to national government and parliamentary offices to urge prompt signing and ratification.
- Prepare and promote resolutions of support for signing and ratifying the Convention for local and regional church bodies, civic organizations, public issue groups, etc.

National church agencies, councils, human rights organizations and migrants' associations should highlight advocacy for government signing and ratification of this Convention beginning in 1991. The following stages are suggested :

- Distribution of this or similar information material as widely as possible through national policy making information and education channels.
- Arrange coverage and commentary in church publications, newspapers, magazines and bulletins.
- Preparation of resolutions of support for action on this Convention for the policy making and/or executive bodies of national churches, civic organizations, human and legal rights groups, etc.
- Setting up delegation visits by national church and civic leaders to government offices and members of parliament to urge signing and ratification.
- Building coalitions for advocacy among a broad range of church, legal concern and migrants' groups.
- Contacting national news media editors and reporters to promote coverage.

These are certainly only a few suggestions for action, some of which may be relevant only in particular contexts. Everyone desiring to act in this field is encouraged to determine first what are the most appropriate and effective means in their own context. This involves taking into account the specific situation in a country and such factors as access to the press, availability of funds, existence of organizational networks, contacts with government officials, etc.

Our Next Steps

On the international level, the Churches' Committee for Migrants in Europe (Brussels) intends to monitor the ratification process carefully and take action where needed within its geographical sphere of action. The World Council of Churches Migration Secretariat (Geneva), the Quaker United Nations Office (New York) and the Churches Committee anticipate convening a watch-committee which would make regular assessments of the state of ratification and recommend constituency action where necessary.

Clearly the first priority is to focus on getting the minimum number of 20 States to sign and ratify the Convention so it can "enter into force". It could well be that international attention should be focused on supporting campaigns in countries where there are significant numbers of migrants and where protection is urgently needed. Consideration should be given to organizing an international workshop where assessments can be shared and coordinated strategies discussed.

At the same time, campaigns for ratification should be launched in countries where the rights of migrants are better defined and secured. Apart from what the Convention offers specifically on protection of migrants' rights, campaigning for ratification could change the debates in various countries on migration issues. In many countries migrants are increasingly seen as people who are causing problems instead of people who contribute to society but whose human rights are not fully secured. Governments are challenged to assume their responsibility to protect the human rights of migrants and, in doing so, give an example to the public in general.

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"When a stranger sojourns with you in your land, you shall not do him wrong."

In many countries migrants are seen as people who are causing problems instead of people who contribute to society but whose human rights are not fully secured.

The Convention seeks to provide minimum standards of human rights protection to migrant workers and their families.

The Churches' Committee for Migrants in Europe is an independent ecumenical agency in which churches of many European countries are members. It makes church and public opinion aware of the international character of migration today and tries to influence the policy-making processes at the level of the Council of Europe and the European Community.

MIGRATION NEWS SHEET

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The World Council of Churches is the global ecumenical fellowship of Protestant and Orthodox churches; its 316 member national churches represent Christian communities in more than 100 countries worldwide. The Council serves the churches to advance towards Christian unity, to facilitate common witness, to support evangelism, to express concern in service of human need, and to foster church renewal, among other purposes.

The WCC Migration Secretariat is a part of the Refugee and Migration Services of the Commission on Inter-Church Aid, Refugee and World Service (CICARWS). This secretariat assists and encourages churches to participate in ministry with migrants and to work for more justice and dignity for migrants worldwide. The secretariat provides resource materials, develops church perspectives, facilitates inter-church consultation, and conveys church views to international forums.

MIGRATION TODAY is the twice yearly WCC migration magazine, serving as a clearing house of church and migrant perspectives, ideas, resources, documentation and options for actions. Subscriptions may be obtained by written request to the WCC Migration Secretariat at the address listed on the title page.